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CHARLES ELMOR

Supreme Court of the United States

OCTOBER TERM, 1935

No. 268

THE SUGAR INSTITUTE, INC., THE AMERICAN SUGAR REFINING COMPANY, MARGARET A. JAMISON, *et al.*,

Appellants,

v.

THE UNITED STATES OF AMERICA.

MEMORANDUM IN OPPOSITION TO APPELLEE'S MOTION TO REQUIRE APPELLANTS TO PAY COST OF PRINTING EXHIBITS AND SUPPLEMENTAL RECORD ON APPEAL

JOHN C. HIGGINS,
Solicitor for Appellants.

SULLIVAN & CROMWELL,
EDWARD J. MCGRATTY, JR.,
Of Counsel.

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THE SUGAR INSTITUTE, INC., THE AMERICAN SUGAR REFINING COMPANY, MARGARET A. JAMISON, *et al.*, *Appellants,* v. THE UNITED STATES OF AMERICA.	No. 268

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By its present motion the Government seeks to recover from Appellants (a) the sum of $4,829.91 representing the cost of printing some 1,862 exhibits contained in Volumes III, IV and V of the record on appeal and (b) the additional sum of $311.37 representing the cost of printing the testimony and exhibits contained in Volume VI of the record, which material had originally been excluded from the record on appeal by order of the District Court. Appellants' objections to the Government's attempt to compel payment of these two items rest upon separate considerations and will therefore be discussed separately.

(a) Volumes III, IV and V of the Record.

Volumes III, IV and V of the record contain some 1,862 exhibits introduced in evidence by the Government during the trial of this action. They were printed by the Government pursuant to leave granted by this Court after Appellants had moved to be relieved of the burden of printing this material. At that time it was stated in Appellants' brief that

> "Efforts of the parties to arrive at an agreement upon a reasonable maximum number of exhibits to be printed were unsuccessful. The printing of the enormous volume of exhibit material desired by the Government would not only be costly in the extreme but would be a useless expenditure of money. It would not be practical for this Court to examine even a small fraction thereof. It is further felt by Appellants that there would be no necessity or occasion for either party to ask the Court to make a specific examination of the vast majority of these exhibits themselves, all of which have been filed with the Court and hence may be cited or quoted to the fullest extent necessary in the briefs of the parties."
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> "The Government has in its possession a complete set of all of those exhibits which it desires to be printed, so the granting of Appellants' motion would not handicap the Government in the preparation of its brief. Another complete set of these exhibits has been filed with the Court. With the present motion in mind, counsel for Appellants took particular pains in the preparation of the set of ex-

> hibits filed with the Court. In the great majority of cases white photostatic copies have been furnished. All exhibits have been assembled in numerical order in a series of neat, clearly labelled folders with a convenient number of exhibits in each separate folder. Should it be necessary for the Court to refer to any particular exhibit commented on in the briefs, the original exhibit could be located in and removed from the file in a few seconds."[1]

The propriety of Appellants' contention that the printing of the enormous volume of exhibits desired by the Government would be a useless expenditure of money, has now, it is submitted, been clearly established. During the course of an extremely lengthy and detailed opinion, the Trial Court referred to only approximately 140 exhibits. Despite the objections of Appellants, the Government proceeded to print the 1,862 exhibits contained in Volumes III, IV and V of the record, consideration of the vast majority of which was utterly unnecessary for the determination of any question raised by the appeal. This fact was apparently appreciated by the Government itself soon after it had incurred the wholly unnecessary expense of printing these exhibits. Of the 1,862 exhibits printed by the Government as Volumes III, IV and V of the record, the Government found

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[1]The statement made on page 3 of the Government's present motion that the original exhibits as filed by Appellants were tied together in three large bundles and were not readily accessible to the Court is incorrect. It is apparently based upon an examination of the exhibits at a time when they had been assembled in the Clerk's office for the purpose of procuring from the printer an estimate of the cost of printing them. The Government's further statement that it had only an incomplete set of the exhibits overlooks the fact that in the few instances where exhibits appeared to be missing from the Government's file, copies thereof were promptly furnished by Appellants.

it necessary or possible to cite only 340 in its brief before this Court. The statement made on page 3 of the Government's present motion that "Only those exhibits which were regarded by Appellee as being essential to a determination of the issues raised on appeal were printed" is wholly inconsistent with the fact that more than four-fifths of the exhibits printed by the Government were not once cited in the Government's brief.

Had the Government been willing, in the first instance, to agree with Appellants upon a reasonable number of exhibits that could fairly be regarded as necessary to a proper determination of the issues raised by the appeal, Appellants would gladly have undertaken the cost of printing the same. Appellants would not even now object to defraying the cost of printing those exhibits actually cited in the Government's brief. Since the Government cited slightly less than one-fifth of the 1,862 exhibits printed at a cost of $4,829.91, the cost of printing those exhibits actually relied upon by the Government "as essential to a determination of the issues raised on appeal" would be approximately $966.

While Appellants are entirely willing to reimburse the Government in this amount, it is submitted that there is neither justice nor equity in the Government's demand that Appellants be compelled to bear the cost of printing the more than 1,500 additional exhibits to which Appellants originally objected and which the Government, after printing, realized were neither necessary nor appropriate for consideration by the Court in the determination of the questions involved.

(b) Volume VI of the Record.

The testimony and exhibits set forth in Volume VI of the record consist solely of evidence concerning (a) fines

and penalties, (b) alleged blacklisting of sugar distributors, (c) alleged attempted bribes by an Institute investigator and (d) alleged allocation of territory. With respect to each of these four matters the Trial Court found the charges made by the Government not to have been sustained. Since the Government refrained from taking any appeal from the adverse findings of the Trial Court regarding these matters, the Trial Court directed that the testimony and exhibits with respect thereto be omitted from the transcript of the record on appeal.

Despite the fact that such testimony and exhibits were wholly unnecessary and irrelevant to the determination of any question raised before this Court, the Government filed a suggestion of a diminution of the record and, pursuant to leave granted by this Court, undertook the printing of this material as Volume VI of the record. After having printed this material, the Government apparently came to the conclusion that, as contended by Appellants and found by the Trial Court, such testimony and exhibits were not in fact relevant to the determination of any of the questions before this Court. Not a line of this testimony nor a single one of these exhibits was referred to by the Government either in its brief or in its argument before this Court. The printing thereof at a cost of $311.37 represented a wholly unnecessary expenditure of money for which Appellants should not be compelled to reimburse the Government.

Respectfully submitted,

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